

MINUTES  
COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT

Tuesday, November 1, 2005

Division One

**A109125 – Estate of Louis Morra, Deceased. John Morra v. Bobbye Morra.**

The appeal is dismissed. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Not for Publication)

Division Three

**A108615 – Big Valley Band of Pomo Indians v. The Superior Court of Lake County; Michael McAllister et al., R.P.I.**

A peremptory writ of mandate shall issue directing respondent superior court to vacate its order overruling petitioner's demurrer and to enter a new and different order sustaining the demurrer without leave to amend as to the breach of contract cause of action. By this opinion the court expresses no view on the propriety of a petition to compel arbitration. The stay previously issued by this court shall be dissolved upon the issuance of the remittitur. Petitioner shall recover the costs incurred in this writ proceeding. Corrigan, Acting P.J. We Concur: Parrilli, J., Pollak, J. (Certified for Publication)

Wednesday, November 2, 2005

Division One

**A109449 – The People v. Aimee Marie Oeser.**

The judgment is affirmed. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication)

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Wednesday, November 2, 2005

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, P.J., Stein, J., and Margulies, J.; and P. Aguilar, Deputy Clerk.

A107313 Valentine Capital Retirement Planning Group, Inc.

A108379 v.

Russell Wixon et al.

Causes called and argued by Edward Zusman, counsel for appellant, and Gordon Young, counsel for respondents. Causes ordered submitted.

A106634 Pacific Gas and Electric Company

v.

City of Oakland

Cause called and argued by Robert J. Stumpf, Jr., counsel for appellant, and Mark H. Penskar, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, the Justice Stein left the bench and Justice Swager joined the bench.

A107219 John Paul Murphy

A108346 v.

Kenneth Cole Productions, Inc.

Causes called and argued by Robert W. Tollen, counsel for appellant, and Donna Ryu, counsel for respondent. Cause ordered submitted.

A109331 People

v.

Christopher B.

Cause called and argued by Jennifer Mannix, counsel for appellant, and Michael E. Banister, counsel for respondent. Cause ordered submitted.

A109235 People

v.

Simon F.

Cause called and argued by Jenny Huang, counsel for appellant, and Michael E. Banister, counsel for respondent. Cause ordered submitted.

A109532 Mui Ung

v.

Henry Koehler

Cause called and argued by Daniel McLoughlin, counsel for appellant, and Alexander Bannon, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 a.m.

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Wednesday, November 2, 2005

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Marchiano, P.J., Stein, J., Swager, J., Margulies, J., and F. Abad, Deputy Clerk.

- A101407 Phil Linza,  
A101408 v.  
The Diamond Center.  
Cause called and argued by Paul Copansky, counsel for appellant in pro per, Kenneth Pedroza, counsel for appellant The Diamond Center, and Stephanie Rubinoff, counsel for respondent. Cause ordered submitted.
- A108609 Charles Meany,  
v.  
State of California Victim Compensation & Government Claim Board.  
Cause called and argued by John Watson, counsel for appellant, and Cheryl Lynn Feiner, counsel for respondent. Cause ordered submitted.
- A102706 Lili Butler-Rupp, et al.,  
A103925 v.  
Roseanna Lourdeaux, et al.  
Cause called and argued by Lance Orloff, counsel for appellants, and Kathy Banke, counsel for respondents. Cause ordered submitted.
- A107087 W. John Miotell, Jr.,  
A108192 v.  
Grubb & Ellis Company, et al.  
Cause called and argued by Raymond Loughrey, counsel for appellant, Paul Fogel, counsel for respondent Berliner Cohen, et al., Denis Shanagher, counsel for respondent Grubb & Ellis Co., and Michael Veiluva, counsel for North America Title Co., appeared but did not argue. Cause ordered submitted.
- A108008 Margaret MacDougall,  
v.  
Daniel Buckley.  
Cause called and argued by Thomas French, counsel for appellant, and Dan Himmelheber, counsel for respondent. Cause ordered submitted.
- A106851 Shelva Jean St. John, et al.,  
v.  
Channel Lumber Company, Inc.  
Cause called and argued by Joseph Carcione, counsel for appellant, and Peter Hart, counsel for respondent. Cause ordered submitted.

Court adjourned.

Wednesday, November 2, 2005 (continued)

Division Two

**A106784 – In re I.G., a Person Coming Under the Juvenile Court Law. San Francisco County Department of Human Services v. Bonnie C. et al.**

The motion for additional evidence on appeal is denied. The Department's motion for judicial notice of two documents filed with the superior court is granted. (Evid. Code, § 452, subd. (d).) The appeal is moot as to the issues regarding I.G.'s placement with K.W. The matter is remanded with directions that the juvenile court proceed in a manner consistent with this opinion. In all other respects, the orders are affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Certified for Partial Publication)

**A110415 – In re Vincent C., a Person Coming Under the Juvenile Court Law. Contra Costa County Social Service Department v. Catherine C.**

The appeal is dismissed. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication)

**A106241 – Theresa Kuhlman v. John Tjoelker.**

The order denying Kuhlman's motion to vacate or set aside part of the 2000 judgment is affirmed. Tjoelker's motion for monetary sanctions is denied. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication)

Division Five

**A111138 – Martin J. Coyne et al., v. The Superior Court of San Francisco County; City and County of San Francisco, R.P.I.**

The Court:\* Therefore, let a peremptory writ of mandate issue compelling respondent superior court to vacate its order granting the City's motion to strike, and to enter a new and different order denying the motion to strike. This decision shall be final as to this court within 10 days. (Cal. Rules of Court, rule 24(b)(3).) Petitioners shall recover their costs. (*Id.*, rule 56(l)(1).) \* Before Stevens, Acting P.J., Simons, J., and Gemello, J. (Not for Publication)

Friday, November 4, 2005

Division One

**A109399 – In re M.T., a Person Coming Under the Juvenile Court Law. The People v. M.T.**

The CYA commitment is herein modified to reflect that defendant is entitled to 573 days of custody credit. As modified, the CYA commitment is affirmed. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Not for Publication)

**A109492 – Stephen P. Wadsworth v. Lake County et al.**

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication)

Division Three

**A106682 – The People v. Benito Flores Garza.**

The judgment is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication)

**A108211 – Marcia Green v. State of California.**

By the Court: The petition for rehearing is denied. McGuiness, P.J.

Division Five

**A108143 – The People v. Raymond Moore.**

The judgment is affirmed. Gemello, J. We Concur: Stevens, Acting P.J., Simons, J. (Not for Publication)

**A108726 – David Arreola v. Charles Scurich.**

The judgment of dismissal, and the order imposing sanctions, are both affirmed. The motion for imposition of sanctions on appeal is denied. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication)

Monday, November 7, 2005

Division One

**A109897 – Robert Henderson v. Alameda County Medical Center.**

By the Court: The petition for rehearing is denied. Marchiano, P.J.

**A110207 – The People v. Aaron Vaughn.**

The abstract of judgment is corrected to reflect only one restitution fine of \$200 under section 1202.4, and a matching restitution fine of \$200 under section 1202.45. As modified the judgment is affirmed. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Not for Publication)

Division Five

**A108622 – Peter Bulletti v. Kaiser Foundation Hospitals, Inc., et al.**

The judgment is affirmed. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication)

Tuesday, November 8, 2005

Division One

**A106634 – City of Oakland v. Pacific Gas and Electric Company.**

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication)

**A110079 – The People v. Jermaine Alexander.**

We find no arguable issues after a full review of the record and, accordingly, affirm the judgment. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication)

**A109584 – In re Yolanda G. et al., Persons Coming Under the Juvenile Court Law. Napa County Health and Human Services Agency v. Angela G.**

The findings and order appealed from are affirmed. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication)

Division Two

**A108979 – In re Cheryl S., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Judy S. et al.**

The appeal is dismissed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication)

**A105109 – The People of the State of California v. Eric Jason Delahoussaye.**

Appellants' convictions are affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication)

**A108324 – The People of the State of California v. William Lee Stanley.**

Because we are bound to follow the California Supreme Court's holding in *Black*, appellant's claim must fail. Accordingly, we affirm the trial courts judgment. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication)

Division Three

**A107814 – The People v. Mario Moralez.**

The judgment is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication)

Tuesday, November 8, 2005 (continued)

Division Four

**A110443 – The People v. Daniel Tabron.**

The trial court is directed to strike the \$200 probation revocation restitution fine imposed pursuant to section 1202.44. In all other respects, the judgment is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Munter, J.\* (Not for Publication)

Division Five

**A109719 – Uecker & Associates, Inc. v. Ernst & Young etc.**

The order denying Ernst & Young's petition to compel arbitration is reversed. The trial court must prepare a new order granting the petition to compel. Appellants shall have costs on appeal. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication)

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\* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Wednesday, November 9, 2005

Division One

**A108798 – The People v. Jason P. Voelker.**

Accordingly, the judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Margulies, J. (Not for Publication)

Division Two

**A104987 – The People v. Armondo Gib Ortega.**

The judgment and sentence are affirmed. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication)

**A101011 – The People v. Jose Francisco Guevara.**

**A105127 -- In re Jose Francisco Guevara, On Habeas Corpus.**

The cause is remanded for resentencing in light of the views expressed in this opinion. In all other respects, the judgment is affirmed. By petition for writ of habeas corpus, defendant raises the issue of ineffective assistance of trial counsel. This petition is denied. Haerle, J. I Concur: Ruvolo, J. (See concurring opinion by Kline, P.J.) (Not for Publication)

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

Wednesday, November 9, 2005

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuiness, P.J., Corrigan, J., and Parrilli J.; and B. Robbins, Deputy Clerk.

A107706 Charles Roberts, et al.  
A108385 v.  
Paul A. Tichinin, et al.  
Causes called and argued by John Patrick Kelley, counsel for appellants, and Martin Fassler, counsel for respondents. Cause ordered submitted.

At this point in the proceedings, Presiding Justice McGuiness announced the court would recess for the following reasons: In the case of Umnov v. Atlas, A107129, appellant in pro per had checked in for argument but left the courtroom and was not present. In the case of Ottovich, et al., v. Wyman, et al., A107923, Jose Garcia, counsel for appellants, had called and said he was delayed by traffic and was therefore not present in the courtroom. The court recessed from 9:25 to 9:45.

A107923 Mark Ottovich, et al.  
v.  
Williard J. Wyman, et al.  
Cause called. Jose Garcia, counsel for appellants, was still not in the courtroom. Susan Fish, counsel for respondents, was present. Cause ordered submitted.

A107129 Julia Umnov,  
v.  
Leon J. Atlas.  
Cause called. Appellant, in pro per, was still not present in the courtroom. There was no appearance for respondent. Cause ordered submitted.

Court adjourned.

Wednesday, November 9, 2005 (continued)

Division Four

**A108871 – The People v. Roy Leon Moran.**

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J.  
(Not for Publication)

**A105887 – D & L Concrete Pumping, Inc. v. Vahdani Construction Company, Inc., et al.; State of California, Cross-Complaint and Appellant.**

The order is affirmed except as to the award of penalties, which is reversed. The matter is remanded for recalculation of the penalties. VCCI shall recover its costs on appeal. Rivera, J. We Concur: Reardon, Acting P.J., Munter, J.\* (Not for Publication)

**A109317 – The People v. Grover Cleveland Thomas.**

By the Court: The petition for rehearing is denied. Reardon, Acting P.J.

Division Five

**A109144 – The People v. Eric Edward Nolan.**

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Gemello, J. (Not for Publication)

**A108829 – Vallejo Street Company, N.V., et al., v. San Francisco Residential Rent Stabilization and Arbitration Board; Scott Conley et al., R.P.I.**

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication)

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\* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Thursday, November 10, 2005

Division One

**A108380 – Lillie Hurd v. Ralph Alexander et al.**

The appeal is dismissed. Marchiano, P.J. We Concur: Swager, J., Margulies, J. (Not for Publication)

Division Two

**A109790 – In re J.P., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Luther G.**

The orders terminating parental rights and denying appellants section 388 petition are affirmed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication)

Division Three

**A109607 – In re Shaylee M., a Person Coming Under the Juvenile Court Law. Contra Costa County Department of Social Services v. Melissa A.**

The orders of the juvenile court are affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication)

**A104481 – Peregrine Funding, Inc., et al., v. Sheppard Mullin Richter & Hampton LLP.**

By the Court: The petition for rehearing and request for judicial notice are denied. McGuiness, P.J.

Thursday, November 10, 2005 (continued)

Division Five

**A108149 – Li Qin v. Lee Edward Lawler.**

The judgment is affirmed. Stevens, Acting P.J. We Concur: Simons, J., Gemello, J.  
(Not for Publication)

**A108963 – Estate of Lorraine F. Schowalter, Deceased. Gary Beaulieu et al., v. Carole A. Baird.**

The judgment denying decedent's will to probate and granting equitable title of her property to respondents is reversed. Costs to appellant. Jones, P.J. We Concur: Stevens, J., Gemello, J. (Not for Publication)

**A107148 – City and County of San Francisco v. Cobra Solutions, Inc., et al.**

The order disqualifying the City Attorney's Office is affirmed. Gemello, J. I Concur: Jones, P.J. (See dissenting opinion by Simons, J.) (Not for Publication)

Monday, November 14, 2005

Division One

**A109175 – The People v. Aaron Lee Johnson.**

The judgment is affirmed. Stein, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication)

**A105990 – The People v. George Edward Hilbert.**

By the Court: Appellant's motion to take additional evidence on appeal pursuant to CRC 22 is denied. The petition for rehearing is denied. Margulies, Acting P.J.

Division Two

**A111468 – In re L.G., a Person Coming Under the Juvenile Court Law. Susan O. v. San Francisco Superior Court, Juvenile Division, Commissioner William Gargano; San Francisco County Department of Human Services, R.P.I.**

The petition is denied. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal. 4<sup>th</sup> 888, 894.) Our decision is final as to this court immediately. (Cal. Rules of Court, rule 24 (b)(3).) Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication)

**A105392 – McCrary construction Company v. Metal Deck Specialists, Inc.  
McCrary Construction Company v. Horizon Sheet Metal, Inc.**

The judgment against Metal Deck is reversed; the judgment in favor of Horizon is affirmed. Costs to Metal Deck and Horizon. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Certified for Publication)

Monday, November 14, 2005 (continued)

Division Three

**A107706 – Charles Roberts, et al., v. Ukiah Unified School District.**

**A108385 – Charles Roberts, et al., v. Paul A. Tichinin, as Mendocino County Superintendent of Schools, et al.**

The judgment in Case No. A108385 is reversed and remanded for redetermination of the relief to which Roberts is entitled. In all other respects, that judgment is affirmed. The judgment in Case No. A107706 is reversed. In both cases, the parties shall bear their own costs on appeal. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication)

**A109635 and A110001 – Preserve Country Neighborhoods v. Cold Creek Compost, Inc., et al.**

**A109641 and A110188 – Preserve Country Neighborhoods v. Cold Creek Compost, Inc., et al.**

By the Court: Upon the unopposed application of plaintiff Preserve Country Neighborhoods, and good cause appearing, it is ordered that the appeals in docket numbers A109635, A109641, A110001 and A110188 be consolidated for purposes of briefing, oral argument, if any, and decision. Counsel for all parties are directed to list all four appellate case numbers on all future pleadings. Requests for extensions of time, if any, will be determined on a case-by-case basis in accordance with California Rules of Court, rule 15. In view of the briefing schedule set forth above, defendants' requests for extensions of time to file appellants' opening briefs in A109641/A110188 are denied as moot. McGuiness, P.J.

Division Four

**A107095 – Church of Scientology International v. The Superior Court of Marin County; Gerald Armstrong, R.P.I.**

By the Court: The petition for rehearing is denied. Reardon, Acting P.J.

Division Five

**A105164 – The People v. Michael Christopher Pitto.**

The judgment is reversed with respect to the findings under section 12022, subdivision (c) and affirmed in all other respects. The case is remanded for further proceedings consistent with this opinion. Gemello, J. We Concur: Jones, P.J., Stevens, J. (Certified for Partial Publication)

Tuesday, November 15, 2005

Division One

**A110560 – The People v. Ted Lawrence Brooks.**

The judgment is affirmed. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Not for Publication)

Division Two

**A109343 – The People v. Mahadi Galaspie.**

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication)

MINUTES

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION TWO

Tuesday, November 15, 2005

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P.J., Lambden, J., Ruvolo, J. and I. Santos, Deputy Clerk.

A106638 Insurance Commissioner of the State of California,  
v.  
Golden Eagle Insurance Company,  
KRC-HLT Corporation.  
Cause called and argued by Timothy Gonzales, counsel for appellant, and Randall Waier, counsel for respondent. Cause ordered submitted.

A109778 Henry Rullhausen,  
v.  
Veronique Moustirats.  
Cause called and argued by John Donegan, counsel for appellant, and Michael Pitts, counsel for respondent. Cause ordered submitted.

A109316 Kamil Issa et al.,  
v.  
Roadway Package System, Inc.  
Cause called and argued by Chris Dolan, counsel for appellant, and James Nelson, counsel for respondent. Submission deferred. Respondent's supplemental letter brief due 25 days; appellant's reply due 10 days thereafter. Cause to be submitted after last letter brief is filed.

A105806 The People,  
v.  
Michael Joseph Connelly.  
Cause called and argued by Paul Carroll, counsel for appellant, by teleconference, and Sharon Birenbaum, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

Court reconvened at 1:30 p.m. Present: Kline, P.J., Haerle, J., Lambden, J., and

I. Santos, Deputy Clerk.

- A104517      The People,  
                  v.  
                  Rene Beal and Margery Stroud.  
Cause called and argued by Gloria Cohen and Alfons Wagner, counsel for appellants, and Catherine McBrien, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A107128      Health Net, IMC., Affiliates,  
                  v.  
                  Stanford University Hospital et al.,  
Cause called and argued Raul Martinez, counsel for appellant, and Barry Sullivan, counsel for respondents. Cause ordered submitted.
- A107085/  
A107486      Kairos Scientific, Inc.,  
                  v.  
                  Fish & Richardson et al.  
Cause called and argued by Andrea Gauthier, counsel for appellant, and Edward Horowitz, counsel for respondent. Cause ordered submitted.

Court recess until Wednesday, November 16, 2005 at 9:30 a.m.

Tuesday, November 15, 2005 (continued)

Division Three

**A107116 – The People v. David Louis Mairs, Jr.**

The judgment is affirmed. Parrilli, J. We Concur: Corrigan, Acting P.J., Pollak, J. (Not for Publication)

Division Four

**A108703 – The People v. Hermon Darrell Harmon.**

The judgment is affirmed. Munter, J.\* We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication)

Division Five

**A108434 – In re Isaiah F., a Person Coming Under the Juvenile Court Law. The People v. Isaiah F.**

The dispositional order is modified to reflect a total restitution award in the amount of \$8,435.74. In all other respects, the order is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication)

**A109302 – In re Leon S., a Person Coming Under the Juvenile Court Law. The People v. Leon S.**

Order Certifying Opinion for Publication. The Court: The opinion in the above-entitled matter filed on October 24, 2005, was not certified for publication in the Official Reports. For good cause it now appears that the opinion should be published in the Official Reports and it is so ordered. Jones, P.J.

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\* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Wednesday, November 16, 2005

Division One

**A107526 – Margaret Seltzer v. William Gwire.**

By the Court: The petition for rehearing is denied. Swager, Acting P.J.

Division Two

**A111069 – In re Amanda D., a Person Coming Under the Juvenile Court Law. Lee Ann C. v. Superior Court for the County of Napa; Napa County Department of Health and Human Services, R.P.I.**

The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4<sup>th</sup> 888, 894; *Bay Development, Ltd v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) Our decision is final in this court immediately. (Rule 24 (b)(3).) Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication)

MINUTES

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION TWO

Wednesday, November 16, 2005

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco, California. Present: Kline, P.J., Haerle, J., Ruvolo, J., and S. Wheeler, Deputy Clerk.

A101176      The People,  
                 v.  
                 Francois Poitier Givens.  
Cause called and argued by Katarzyna Kozik, counsel for appellant, and Christine Vom Saal, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, J. Haerle left the bench and J. Lambden joined the bench for the remainder of the calendar.

A107461      Daniel Lyons,  
                 v.  
                 Chinese Hospital Association, et al.  
Cause called and argued by Richard Joseph Nelson and Jeffrey Charles Hallam, counsel for appellant, and Sameh Nader Dawood, counsel for respondents. Cause ordered submitted.

Court recessed until 1:30 p.m.

Court reconvened at 1:30 p.m. Present: Haerle, J., Acting P.J., Lambden, J., Ruvolo, J. and S. Wheeler, Deputy Clerk.

A108438      In re Christopher A., a Person Coming Under the Juvenile Court Law.  
                 The People,  
                 v.  
                 Christopher A.  
Cause called and argued by Rita Leone Swenor, counsel for appellant, and Michael E. Banister, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A108043      The People,  
                 v.

Raquel Chavez.

Cause called and argued by Kathleen W. Novoa, counsel for appellant, and Lorilee Zimmer, certified law student supervised by Allan Yannow, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A107353 & Cynthia Hoeffler, as successor-in-interest to  
A107964 Philip Hoeffler, Jr., II, deceased,

v.

Rockwell Automation, Inc.

Cause called and argued by Christopher A. Keele, counsel for appellant, and Nancy Bridget Thorington, counsel for respondent. Cause ordered submitted.

A099590 Richard S. Charney, et al.

v.

Hamzy Hassan Shirry.

Cause called and argued by Nicole Soltenzadeh, counsel for appellant, and Peter N. Hadiaris, counsel for respondents. Cause ordered submitted.

**COURT ADJOURNED.**

Wednesday, November 16, 2005 (continued)

Division Three

**A106779 – In re Edgar U., a Person Coming Under the Juvenile Court Law. The People v. Edgar U.**

The probation revocation order is reversed in part and the case is remanded to the juvenile court for reconsideration of the disposition. Corrigan, Acting P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication)

Division Four

**A109732 – The People v. David Conerly.**

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Rivera, J. (Not for Publication)

Division Five

**A108641 – Professional Engineers in California Government et al., v. Jeff Morales et al.; Caltrop Engineering Corp., et al., Intervenors and Respondents.**

The judgment of the trial court is affirmed in part and reversed in part. The matter is remanded with instructions to the trial court to issue a peremptory writ of mandate ordering Caltrans to refrain from applying the regulations contained in the 2001 Director's Policy, the 1992 Consultant Services Manual or the 2003 A&E Handbook without first complying with the rulemaking procedures of the Administrative Procedure Act. In all other respects, the judgment is affirmed. Each side shall bear its own costs. Gemello, J. We Concur: Jones, P.J., Simons, J. (Certified for Partial Publication)

**A109162 – In re Michael T., a Person Coming Under the Juvenile Court Law. The People v. Michael T.**

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication)

**A109081 – The People v. Christopher M. Santos.**

The judgment is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication)

Thursday, November 17, 2005

Division One

**A108008 – Margaret MacDougall v. Daniel Buckley.**

The trial court's order granting a new trial is affirmed. Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication)

Division Two

**A103936 – The People of the State of California v. Sergio Octavio Pena and Adam Gabriel Garcia.**

Order Modifying Opinion and no change in judgment. The Court: It is ordered that the opinion filed herein on October 28, 2005, be modified as follows: (See Order) There is no change in the judgment. The petitions for rehearing by appellants Pena and Garcia are denied. Kline, P.J. (Not for Publication)

Division Three

**A110615 – The People v. James A. Barry.**

The judgment is affirmed. Corrigan, Acting P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication)

**A109252 – Environmental Law Foundation v. Wykle Research, Inc.**

The judgment is affirmed. Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Certified for Publication)

**A109579 – In re Ramone R., a Person Coming Under the Juvenile Court Law. City and County of San Francisco Department of Human Services v. Elvina R.**

The appeal is dismissed as moot. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication)

**A108359 – In re Jasmine T. et al., Persons Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Julie T.**

The appeal is dismissed. Pollak, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication)

**A106042 – The People v. Agustin Espinoza Rodriguez.**

The judgment is affirmed. Parrilli, J. We Concur: Corrigan, Acting P.J., Pollak, J. (Not for Publication)

Thursday, November 17, 2005 (continued)

Division Five

**A109699 – The People v. James William Dougherty.**

The judgment is affirmed. Jones, P.J. We Concur: Simons, J., Gemello, J. (Not for Publication)

**A105874 – Miller Avenue Professional and Promotional Services, Inc. v. Charles A. Koss et al.**

Order Modifying Opinion and Denying Rehearing and change in judgment. The Court: It is ordered that the opinion filed herein on October 27, 2005, be modified as follows: (See Order) This modification changes the judgment. The petition for rehearing filed by respondents is denied. Jones, P.J. (Not for Publication)

**MINUTES**  
COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT

DIVISION FIVE

November 17, 2005

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Jones, P.J.; Stevens, J. Simons, J., Gemello, J., and Mary P. Quilez, Deputy Clerk and CHP Officer Victor Scrivner and Stephen Umeki, Bailiffs.

- A108048      Acaciabank, et al.  
                  v.  
                  Kin Wing Chan, et al  
                  Cause called and argued by Steven N. Richman counsel for appellants and by  
                  Cary Lee Dictor, counsel for respondents. Cause ordered submitted.
- A109014      Craig Walker. et al.,  
                  v.  
                  Diane Allen.  
                  Cause called and argued by Donald J. Putterman and Constance J. Yu, counsel for  
                  appellant, and by Daniel Maguire and Robert Ohker, counsel for respondents.  
                  Submission ordered deferred.
- A107985      The People  
                  v.  
                  Daniel Patrick Hard.  
                  Cause called and argued by Joseph Garrett Baxter, counsel for appellant, and by  
                  Sharon Birenbaum, Deputy Attorney General. Counsel for respondent. Cause  
                  ordered submitted.
- A107488      Michael Kelly  
                  v.  
                  Musa Ibrhim, et al.  
                  Cause called and argued by Charles J. Katz, counsel for appellants and by Eugene  
                  L. Bass, counsel for respondent. Cause ordered submitted.
- A107111      The People  
                  v.  
                  Antonio Perkins.  
                  Cause called and argued by Barry Martin Karl, counsel for appellant, and by

Mark S. Howell, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

- A106172      The People  
v.  
Joseph Grice.  
Cause called and argued by James Kyle Gee, counsel for appellant and by John R. Vance Jr., Deputy Attorney General. Counsel for respondent. Cause ordered submitted.
- A107261      Mona Dunham, et al.,  
v.  
Memberworks, Inc.  
Cause called and argued by Robert M. Bramson, counsel for appellants, and by Darrel Jeffrey Hieber, counsel for respondent. Cause ordered submitted.
- A109232      The People  
v.  
Timothy Floyd Littlefield.  
Cause called and argued by Richard Jay Moller, counsel for appellants, by teleconference and by Dorian Jung, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A109831      Jeff Franklin  
v.  
Scott Jenny.  
Cause called and argued by Matthew David Brekhus, counsel for appellant, and by Ryan Polk, counsel for respondent. Cause ordered submitted.
- A111387      Bernadette P.,  
v.  
The Superior Court of Contra Costa County.  
Cause called and argued by Anthony Guy Ashe for appellant, and by Paul Muniz, Deputy County Counsel, for respondent. Cause ordered submitted.
- A111388      John N.,  
v.  
The Superior Court of Contra Costa County.  
Cause called and argued by Tamara Ann Predes, counsel for appellant, and by Paul Muniz, Deputy County Counsel, for respondent. Cause ordered submitted.
- A108007      Sea Knot Construction Co., Inc.  
v.  
Contri Construction Co.  
Cause called and argued by Alan Goldberg, counsel for appellant, and by James

David Curran, counsel for respondent. Cause ordered submitted.

A109137      Kenneth J. Howard

v.

Christopher B. Dolan.

Cause called and argued by Alan B. Bayer and Heather E. Borlase, counsel for appellant, and by Christopher B. Dolan, counsel for respondent. Submission ordered deferred.

Court adjourned at 3:30 p.m.

Friday, November 18, 2005

Division One

**A107087 and A108192 – W. John Miottel, Jr. v. Berliner Cohen et al.**

The judgments appealed from in Case Nos. A107087 and A108192 are affirmed.  
Margulies, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication)

Division Three

**A107521 – The People v. Thomas Daniel Strow.**

The judgment is affirmed. Parrilli, J. We Concur: Corrigan, Acting P.J., Pollak, J. (Not for Publication)

**A110534 – The People v. William David Fernandez.**

The judgment is hereby amended to reduce the laboratory analysis fee to \$115 and the drug program fee to \$360. As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment reflecting these modifications and to forward a certified copy of the abstract to the Department of Corrections. Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication)

**A110490 – The People v. Cynthia Robinson Clay.**

The judgment is affirmed. Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication)

**A107129 – In re the Marriage of Julia Umnov and Leon Atlas. Julia Umnov v. Leon Atlas.**

The appeal is dismissed. McGuiness, P.J. We Concur: Corrigan, J., Pollak, J. (Not for Publication)

**A106865 – George McCown v. Department of Motor Vehicles.**

By the Court: The petition for rehearing is denied. McGuiness, P.J.

**A107923 – Mark Ottovich, et al., v. Willard J. Wyman.**

The judgment is affirmed. Wyman shall recover his costs on appeal. McGuiness, P.J. We concur: Corrigan, J., Parrilli, J. (Not for Publication)

Friday, November 18, 2005 (continued)

Division Four

**A109852 – The People v. Gonzalo Ramos, Jr.**

The judgment is affirmed. Reardon, Acting P.J. We Concur: Rivera, J., Munter, J.\*  
(Not for Publication)

**A108679 – Felicia Pinkwater v. San Francisco Bay Area Rapid Transit District.**

The judgment denying BART's defense costs is affirmed. Each party shall bear their own costs on appeal. Reardon, Acting P.J. We Concur: Sepulveda, J., Munter, J.\* (Not for Publication)

Division Five

**A109101 – Paul Cobb et al., v. Jack O'Connell.**

Order Modifying Opinion and Certifying opinion for Partial Publication. The Court: There is no change in the judgment. The opinion in the above-entitled matter filed on October 25, 2005, was not certified for publication in the Official Reports. For good cause it now appears that the opinion should be partially published in the Official Reports and it is so ordered. Jones, P.J. (Certified for Partial Publication)

**A107488 – Michael Kelly v. Musa Ibrahim et al.**

The judgment is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication)

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\* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

\* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, November 21, 2005

Division One

**A106960 – Viva! International Voice for Animals et al., v. Adidas Promotional Retail Operations, Inc. et al.**

The summary judgment is affirmed. Each party shall recover its own costs on appeal. Marchiano, P.J. We Concur: Stein, J., Margulies, J. (Certified for Publication)

Division Two

**A108136 – Mitchell Muroff v. Jeffrey P. Brainerd et al.**

The judgment is affirmed. Respondents are to recover their costs on appeal. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication)

Division Three

**A105655 – Poonkinney Road Coalition, et al., v. County of Mendocino, et al; Clyde R. Williams, et al., R.P.I.**

The judgment is reversed. The trial court is directed to grant the petition and issue a peremptory writ of mandate ordering Mendocino County Board of Supervisors to vacate its adoption of the negative declaration and approval of the use permit for the project, and to refrain from issuing a new use permit until there has been compliance with CEQA. Appellants shall recover their costs on appeal. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication)

**A110923 – The People v. Ansar El Muhammad.**

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication)

Division Five

**A109232 – The People v. Timothy Floyd Littlefield.**

The order is affirmed. Stevens, Acting P.J. We Concur: Simons, J., Gemello, J. (Not for Publication)

Tuesday, November 22, 2005

Division Two

**A108462 – Metreon, Inc. v. Loews California Theatres, Inc.**

The judgment is reversed with directions to the trial court to vacate the arbitration award. (Code Civ. Proc., § 1286.2, subd. (b).) Metreon is awarded its costs and fees on appeal. (See section 19.2 of the lease.) Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication)

**A107763 and A107769 – Greystone Homes, Inc. v. Chuck Cake, as Acting Director, etc., et al.; Pleasant Hill Redevelopment Agency, Defendant and Appellant.**

The judgment is reversed and this case is remanded to the trial court for further proceedings consistent with this opinion. Costs on appeal are awarded to appellants. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication)

**A111039 – Ali A. Abid v. Kbus Holdings, LLC et al.**

This appeal is dismissed without reaching the merits for lack of appellate jurisdiction. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication)

**A104097 – Jack Einheber v. Regents of the University of California, et al.**

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication)

**A105551 – Jack Einheber v. Regents of the University of California, et al.**

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication)

Division Three

**A110507 – In re Terrence M., a Person Coming Under the Juvenile Court Law. The People v. Terrence M.**

The order of the juvenile court is affirmed. Corrigan, Acting P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication)

Tuesday, November 22, 2005 (continued)

Division Four

**A107652 – Ernest R. Alderson et al., v. Mike Manuel.**

**Mike Manuel v. Ernest R. Alderson et al.**

The trial court is directed to modify the judgment to change the references to Mike Manuel *and* Mare Island Sales to Mike Manuel dba Mare Island Sales. As so modified, the judgment is affirmed. The parties are to bear their own costs on this appeal. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication)

**A110512 – In re Alfredo G., a Person Coming Under the Juvenile Court Law. The People v. Alfredo G.**

The cause is remanded for an exercise of discretion by the trial court as to whether the maximum period of confinement of six years is appropriate under “the facts and circumstances of the matter or matters which brought or continued the minor under the jurisdiction of the juvenile court...” (§ 731, subd. (b).) In all other respects, the judgment is affirmed. Reardon, Acting P.J. We Concur: Rivera, J., Munter, J.\* (Not for Publication)

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\* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR

November 22, 2005

The Court convened at 9:30 a.m. in its courtroom located at 350 McAllister St., San Francisco, California. Present: Reardon, Acting P.J., Sepulveda, J., and Rivera, J.; Ines Calanoc, Deputy Clerk; CHP Officer Vincent Chambers, Bailiff.

- A108557      Mohammad Meshkin  
A108998      v.  
                 Zia Sabetimani et al.  
                 Cause called. Paul Kleven argued for appellant Meshkin. Alan Hunter argued for respondents. Cause submitted.
- A108383      Conservatorship of Elenore H. Mosher.  
                 Debra J. Dolch et al.  
                 v.  
                 Robert Mosher  
                 Cause called. Randall Schmidt argued for appellant Mosher. Arthur Park argued for respondents. Cause submitted.
- A109805      Judicial Council Coordinated  
                 Proceedings No. 4298 and 4303.  
                 Automobile Antitrust Cases I, II.  
                 Cause called. Christopher Lebsock argued for appellants. Norman Hile argued for respondents Volkswagen, and Nissan Japan; Deborah Garza argued for respondent Canadian Auto Dealers. Cause submitted.

Court recessed at 11:11 a.m.

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR  
Tuesday, November 22, 2005

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Reardon, Acting P.J., Sepulveda, J. and Assigned Judge John Munter of the San Francisco County Superior Court; Channing Hoo, Deputy Clerk; CHP Officer Aron Ching, Bailiff.

A107905      Warren A. Slocum et al.  
                 v.  
                 State Board of Equalization of the State of California  
                 American Airlines et al.  
Cause called. John E. Mueller argued for appellants American et al. Claude F. Kolm argued for respondents. Cause submitted.

A108369      Larnita Pette  
                 v.  
                 William Burton  
Cause called. David Blatte argued for appellant Pette. Linda Wyner argued for respondent. Cause submitted.

At this point, the Court reconstituted itself to include Reardon, Acting P.J., Rivera, J., and Munter, Assigned Judge.

A107768      Francis A. Martin III  
                 v.  
                 City and County of San Francisco  
Cause called. Jonathan R. Bass argued for appellant Martin. Sarah Ellen Owsowitz argued for respondent. Cause submitted.

The Court adjourned at 3:12 p.m.

Tuesday, November 22, 2005 (continued)

Division Five

**A110559 – The People v. Chance Every Trichel.**

The order is affirmed. Jones, P.J. We Concur: Stevens, J., Gemello, J. (Not for Publication)

**A110167 – Estate of Sophie Tucker Greenberg, Deceased. Norman Greenberg v. Susan Elliot; Caron Schmierer; Respondent and Special Administrator.**

The superior court's order is reversed and remanded with instructions to vacate the \$1,984.15 "surcharge" against Greenberg and to modify the distribution to Greenberg accordingly. The order is affirmed in all other respects. The parties shall bear their own costs on appeal. Gemello, J. We Concur: Stevens, Acting P.J., Simons, J. (Not for Publication)

**A109620 – The People v. Franklin T. Howard.**

The judgment of conviction is affirmed. Stevens, J. We Concur: Jones, P.J., Gemello, J. (Not for Publication)

Wednesday, November 23, 2005

Division One

**A109235 – In re Simon F., a Person Coming Under the Juvenile Court Law. The People v. Simon F.**

Accordingly, the finding on Count 1 as a felony offense is affirmed. The finding on Count 2 is reversed. The case is remanded to the juvenile court for a new dispositional hearing in light of the reversal of Count 2. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication)

**A108523 – The People v. Bond Kinoa Laupua.**

The sentence of the trial court is affirmed. Margulies, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication)

**A108831 – In re Giovanni T., a Person Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. M.T. et al.; Giovanni T., Appellant.**

The orders appealed from are reversed. The matter is remanded with directions that the juvenile court (1) reinstate the November 2004 supplemental petition as to Giovanni; (2) direct the Agency to make a complete documentary showing that it has fully complied with the notice of the ICWA or, if it has not in fact fully complied, order that it promptly do so; and (3) hold further proceedings consistent with the ICWA if Giovanni is determined to be an Indian child and the ICWA applies to these proceedings, and otherwise conduct further proceedings consistent with the views on non-ICWA issues expressed in this opinion. Margulies, J. We Concur: Marchiano, P.J., Swager, J. (Not for Publication)

**A109331 – In re Christopher B., a Person Coming Under the Juvenile Court Law. The People v. Christopher B.**

The enhancement findings on Counts 1 and 2 pursuant to section 12202.7 are stricken, and the juvenile court is directed to amend the judgment accordingly. The case is remanded to the juvenile court for further dispositional proceeding and order in light of the reversal of the great bodily injury enhancements. In all other respects, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication)

Wednesday, November 23, 2005 (continued)

Division Three

**A110460 – The People v. William Era Lee McCardle.**

The judgment is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication)

**A109349 – In re Daja V., a Person Coming Under the Juvenile Court Law. Del Norte County Dept. of Health & Social Services v. Deral V.**

The order terminating parental rights is conditionally reversed, and the cause is remanded to the juvenile court with directions to conduct such further proceedings as are necessary to establish full compliance with the notice requirements of the ICWA. If, after notice has been sent as required by the ICWA, no response is received indicating the minor is an Indian child, or if the responses received indicate the minor is not an Indian child within the meaning of the ICWA, the order terminating parental rights shall immediately be reinstated and such further proceedings as are appropriate shall be conducted. If the Secretary of the Bureau of Indian Affairs and/or any tribe determines that the minor is an Indian child within the meaning of the ICWA, the juvenile court is ordered to conduct a new section 366.26 hearing in conformity with all provisions of the ICWA. In all other respects, the order is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Pollak, J. (Not for Publication)

**A105111 – The People v. Kerry Lynde Baxter.**

The judgment is affirmed. Parrilli, J. We Concur: Corrigan, Acting P.J., Pollak, J. (Not for Publication)

**A108276 – In re Ashli T., et al., Persons Coming Under the Juvenile Court Law. Contra Costa Dept. of Social Services v. Tami T.**

**A110675 – Contra Costa Dept. of Social Services v. Tami T.**

By the Court: On the court's own motion, in the interests of judicial economy, and good cause appearing, it is ordered that the above-captioned appeals in docket numbers A108276 and A110675 be consolidated for purposes of decision. **Counsel for all parties are directed to list both appellate case numbers on any future pleadings.** McGuiness, P.J.

COURT OF APPEAL  
STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

Wednesday, November 23, 2005

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: McGuiness, P.J., Parrilli J., and Pollak J.; and J. Alameda, Deputy Clerk.

A108104     West Davis Neighbors,  
              v.  
              The Regents of the University of California.  
Cause called and argued by Donald Burns Mooney, counsel for appellant, and Ellen J. Garber, counsel for respondent. Cause ordered submitted.

A107411     The People,  
              v.  
              Sheila Marie Thomas.  
Cause called and argued by Joel Coble, counsel for appellant, and Steve Condie, counsel for respondent. Cause ordered submitted.

At this point in the proceedings, Justice Corrigan joined the bench. Justice Parrilli remained in the courtroom.

A107866     Robert G. Citragno,  
              v.  
              Allen Citragno.  
Cause called and argued by Laurence Fred Padway, counsel for appellant, Allen Citragno, respondent, in pro per. Cause ordered submitted.

At this point in the proceedings, Presiding Justice McGuiness left the bench. Justice Corrigan presided over the last four cases on the morning calendar.

A108148     Curtis Ormiston, et al.,  
              v.  
              Spencer J. Thomas.  
Cause called and argued by Russell F. Brasso, counsel for appellant/cross-respondent, and Paul Gordon Carey, counsel for respondents/cross-appellants. Martin Ambacher appeared for respondents/cross-appellants but did not argue. Cause ordered submitted.

A108374     Sadaharu Ota, et al.,  
                 v.  
                 Macerich CM Village Ltd Partnership.  
                 Cause called and argued by Craig M. Hunt, counsel for appellants, and Todd C.  
                 Hedin, counsel for respondent. Cause ordered submitted.

A106106     David West,  
                 v.  
                 Taylor & Goins, et al.  
                 Cause called and argued by Richard Allen Phelps, counsel for appellant, and  
                 Maxwell Nnamdi Njelita, counsel for respondents. Cause ordered submitted.

A101622     The People  
                 v.  
                 Terry Lloyd Haddix.  
                 Cause called and argued by Barbara Michel, counsel for appellant, who appeared by  
                 telephone conference and David Rose, counsel for respondent. Cause ordered  
                 submitted.

Court adjourned.

Wednesday, November 23, 2005 (continued)

Division Five

**A107111 – The People v. Antonio Perkins.**

The judgment is affirmed. Gemello, J. We Concur: Stevens, Acting P.J., Simons, J.  
(Not for Publication)

**A109064 – Santos A. Orellana v. Jose A. Castillo.**

The order is affirmed. Simons, J. We Concur: Jones, P.J., Gemello, J. (Not for  
Publication)

**A109598 – The People v. Robert Ochoa Martinez.**

There are no arguable errors. The judgment is affirmed. Simons, J. We Concur:  
Stevens, Acting P.J., Gemello, J. (Not for Publication)

Monday, November 28, 2005

Division Two

**A110147 – In re Edward L., a Person Coming Under the Juvenile Court Law. The People v. Edward L.**

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication)

Division Three

**A107960 – The People v. Vincente Gabriel Perez-Martinez.**

The judgment is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication)

Division Four

**A107711 – Les G. Miklosy et al., v. Regents of the University of California et al.**

By the Court: The petition for rehearing is denied. Reardon, Acting P.J.

**A109581 – In re Savannah L., a Person Coming Under the Juvenile Court Law. Mendocino County Department of Social Services v. Edward L.**

The order is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication)

Division Five

**A106383 – Tom Frame et al., v. PricewaterhouseCoopers, LLP.**

The judgment is reversed. Appellants shall recover their costs on appeal from the respondent. Stevens, Acting P.J. We Concur: Simons, J., Gemello, J. (Certified for Partial Publication)

**A107676 – The People v. Darwin Heath.**

The matter is remanded with direction to the trial court to strike or impose the prior prison term enhancements. The judgment is otherwise affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Certified for Partial Publication)

Tuesday, November 29, 2005

Division Two

**A104517 – People of the State of California v. Margaret S. Stroud and Rene Beal.**

Appellants' convictions are affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J.  
(Not for Publication)

**A109444 – In re Jennifer A., a Person Coming Under the Juvenile Court Law. The People v. Jennifer A.**

The matter is remanded to the juvenile court to calculate appellant's maximum period of confinement in a manner consistent with this opinion. In all other respects, the judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication)

**A107128 – Health Net, Inc., Affiliates v. Stanford University Hospital and Stanford Hospital and Clinics.**

The trial court's judgment confirming the arbitration award is affirmed. Respondent is awarded costs. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication)

Division Three

**A109730 – The People v. Baron Lamar Davison.**

The judgment is affirmed. McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication)

**A103145 – Floyd Koch et al., v. Edward Hankins et al.**

By the Court: The petition for rehearing is denied. McGuiness, P.J.

**A104043 – Jean Deleage v. Gerald Rosenbluth, et al.**

By the Court: The petition for rehearing is denied. McGuiness, P.J.

Tuesday, November, 29, 2005 (continued)

Division Four

**A108369 – Larnita Pette v. William Burton et al.**

The judgment is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Munter, J.\*  
(Not for Publication)

**A105905 – The People v. Vincent Tu.**

The judgment is affirmed. We note that the abstract of judgment shows a stayed six-year term for assault with a firearm. The trial court stated it would dismiss that offense at the time of sentencing. Moreover, appellant never pleaded to that offense. Therefore, we order the abstract of judgment amended to delete the stayed sentence. Reardon, Acting P.J. We Concur: Sepulveda, J., Munter, J.\* (Not for Publication)

Division Five

**A109429 – The People v. Michael Walling.**

The judgment is affirmed. Gemello, J. We Concur: Jones, P.J., Simons, J. (Not for Publication)

**A108483 – In re Arianna and Michael M., Persons Coming Under the Juvenile Court Law. Alameda County Social Services Agency v. Carol M.**

The jurisdictional and dispositional order is affirmed. Gemello, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication)

**A105316 – The People v. Victor Eurayl Duffy.**

The judgment is affirmed. Simons, J. We Concur: Stevens, Acting P.J., Gemello, J.  
(Not for Publication)

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\* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

\* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Wednesday, November 30, 2005

Division One

**A108524 – The People v. Emilio B. Fernandez.**

Accordingly, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication)

**A109412 – The People v. Steven M. Fryman.**

Accordingly, the judgment is affirmed. Swager, J. We Concur: Marchiano, P.J., Stein, J. (Not for Publication)

**A108379 – Valentine Capital Retirement Planning Group, Inc. v. Russell Wixon et al.**

The order awarding fees is affirmed. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication)

**A107313 – Valentine Capital Retirement Planning Group, Inc. v. Russell Wixon et al.**

The order of dismissal is affirmed. Stein, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication)

**A109257 – Hartford Fire Ins. Co. et al., v. Superior Court of San Francisco County; Scott C. Turner, R.P.I.**

Let a peremptory writ of mandate issue commanding respondent San Francisco County Superior Court to vacate its order denying petitioners' motion for judgment on the pleadings and to enter a new order granting the motion for judgment on the pleadings. The stay previously imposed shall remain in effective until the remittitur issues. Stein, Acting P.J. We Concur: Swager, J., Margulies, J. (Certified for Publication)

**A111517 – Joseph B. v. San Mateo County Superior Court; San Mateo County Human Services Agency et al., R.P.I.**

The petition for extraordinary writ is denied on the merits. (See Cal. Const., art VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4<sup>th</sup> 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) This decision is final in this court immediately. (Rule 24(b)(3).) Swager, J. We Concur: Marchiano, P.J., Margulies, J. (Not for Publication)

Wednesday, November 30, 2005 (continued)

Division Two

**A106411 – The People v. Tyrone Miguel Allen.**

Appellant's sentence is vacated, and the case is remanded to the trial court for resentencing consistent with this opinion. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication)

**A109366 – In re the Marriage of Monica Ellen Rizzo and Roger D. Rizzo. Roger Daniel Rizzo v. Moniva Ellen Rizzo.**

The December 20, 2004 order is affirmed. Roger to pay Monica's costs on appeal. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication)

**A108208 – The People v. Arturo Rodriguez Garcia.**

The judgment and sentence are affirmed. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication)

**A107902 – Emeziem & Ogbu, et al., v. Orange County Teachers Federal Credit Union.**

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication)

Wednesday, November 30, 2005 (continued)

Division Three

**A107866 – Estate of Guido D. Citragno, Deceased. Robert G. Citragno v. Allen M. Citragno.**

The order of the probate court is reversed. The parties shall bear their own costs on appeal. McGuiness, P.J. We Concur: Corrigan, J., Pollak, J. (Not for Publication)

**A108660 – Joan McMillan v. Martin Gavrilloff.**

The judgment of dismissal entered upon an order sustaining a motion for judgment on the pleadings without leave to amend is affirmed. Appellant shall pay respondent's costs on appeal. McGuiness, P.J. We Concur: Corrigan, J., Pollak, J. (Not for Publication)

**A107411 – The People v. Sheila Thomas.**

The restitution order is affirmed in its entirety. McGuiness, P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication)

**A108374 – Sadaharu Ota v. Macerich CM Village Limited Partnership.**

The judgment is affirmed. Macerich shall recover its costs on appeal. Pollak, J. We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication)

**A106106 – David West v. Taylor & Goins LLP, et al.**

The judgment is reversed and the case is remanded to the trial court for further proceedings. Corrigan, Acting P.J. We Concur: Parrilli, J., Pollak, J. (Not for Publication)

**A108915 and A112151 – The People v. Donald Roy Crouch. In re Donald Roy Crouch, on Habeas Corpus.**

By the Court: At petitioner's request, the petition for a writ of habeas corpus, In re Crouch, A112151, is consolidated with the appeal in People v. Crouch, A108915. This court's determination of whether to issue an order to show cause will be deferred until the issues on the appeal have been considered. The Attorney General is directed to furnish opposition to the petition on or before December 15, 2005. Petitioner's response, if any, must be filed within 15 days thereafter. Please direct any inquiries to Beth Robbins, deputy clerk for Division Three, at (415) 865-7295. McGuiness, P.J.

**A111676 – Samantha S. v. The Superior Court of Sonoma County; Sonoma County Department of Human Services, R.P.I.**

The petition is denied on the merits. Parrilli, J. We Concur: McGuiness, P.J., Pollak, J. (Not for Publication)

Wednesday, November 30, 2005 (continued)

Division Four

**A108796 – The People v. Mohammed Zarin Khan.**

The trial court is directed to stay the sentence on count 2; to strike the true finding on the enhancement allegation pursuant to section 1871.4, subdivision (c); to amend the minute orders to reflect a not guilty verdict on count 8; and to amend the abstract of judgment to reflect those changes. The court is further directed to forward the amended abstract of judgment to the Department of Corrections. As modified, the judgment is affirmed. Rivera, J. We Concur: Reardon, Acting P.J., Munter, J.\* (Not for Publication)

Division Five

**A111155 – In re Don R. W., a Person Coming Under the Juvenile Court Law. The People v. Don R. W.**

The disposition order of August 15, 2005, is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication)

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\* Judge of the Superior Court of San Francisco County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.